

EXPERT REPORT OF YOHAI BAR ZAKAY

Prepared for:

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Statement of Qualifications

1. I served for 25 years in the Israeli Defense Forces (the “IDF”), between 1987-2012, and ultimately achieved the rank of Colonel.

2. From 1987 to 1991, I served in different positions within the Logistics Corps.

3. In 1991, I had a career change, and joined, after comprehensive training, the Military Intelligence Directorate (commonly referred to as “AMAN”). A large portion of my military career was spent serving within AMAN’s 8200 Unit, which is the largest Intelligence unit in the IDF, responsible for collecting signal intelligence and code decryption. The 8200 Unit is responsible for most of the intelligence collected by the IDF.

4. In 1993 I was appointed to establish a new 8200 Unit base, which was responsible for the geographical area of the Palestinian Authority (West Bank and the Gaza Strip), following the Oslo agreements. I was the commander of this new base between 1993 and 1995.

5. From 1995 to 1997 I served as the Executive Assistant to the 8200 Unit Commander. In this role I was responsible for coordinating between the Unit’s commander and all relevant commanders and bureaus of the different intelligence units in the intelligence community in Israel, as well as coordinating between the Unit’s commander and all subordinated units of 8200. In the course of fulfilling my duties as Executive Assistant to the 8200 Unit Commander, I reviewed intelligence data concerning all threats to Israel’s security, including threats originating from within the West Bank and Gaza.

6. In 1999 I was appointed to establish a special department within the 8200 Unit that dealt with special operations, and I was the commander of the operations section of that department until 2001. This position involved aggregating and analyzing intelligence

information, as well as managing the execution of special and complicated operations, including numerous counter-terrorism operations. This department, which started as a small body, coordinating with other bodies within the 8200 Unit, was institutionalized through the years and increased in size in response to greater security concerns. After leaving this department for two years, I returned to serve as its Chief from 2003 to 2005. Throughout my service in this special operations department, my primary concern was combatting threats originating within Palestinian-controlled areas, as well as threats originating from outside Israel and the Palestinian-controlled areas.

7. From 2001 to 2003 I served as the Operations Chief of the 8200 Unit. In this capacity I was responsible for oversight of daily operational activity; coordinating with the Intelligence community; and the Unit's readiness for any confrontation. While serving in this capacity, I reviewed countless intelligence assessments with regard to security threats originating from the West Bank and Gaza, and was closely involved in the "Defensive Shield" operation which was undertaken by the IDF and Israeli Intelligence in 2002, as part of the efforts of the State of Israel to combat terror infrastructures in the West Bank.

8. From 2005 to 2008, I was posted as Israel's Intelligence liaison for the 8200 Unit in Washington DC. In this position, I represented Israel's Military Intelligence Directorate in front of the U.S.'s intelligence units, including the NSA and the CIA, and was responsible for the cooperation and coordination between the U.S. intelligence units and 8200. During this time, I, as well as the above mentioned U.S. intelligence units, had special concern with regard to intelligence relating to the Gaza Strip, especially with regard to Hamas's victory in the January 2006 elections; its taking over the Gaza Strip in 2007; and the effects of these events.

9. From February 2008 to November 2009, I served as the Executive Assistant for the Director General of the Ministry of Defense (under the Minister of Defense, Mr. Ehud Barak). My service at the Ministry of Defense included responsibility on various departments in the ministry. Among others, my office was responsible for the connection between the Ministry of Defense and the Israeli civilians that live around the Gaza Strip including, *inter alia*, providing the localities protective measures, security solutions and the best alarm systems available. Throughout this period, I reviewed intelligence assessments and data with regard to the conflict between the State of Israel and militant forces operating within the Gaza Strip, and I was constantly informed, in real time, about every security incident which occurred in Israel.

10. In November 2009 I was appointed back to the 8200 Unit; this time as the Unit Deputy Commander. I held this position until May 2012, when I retired from the IDF.

11. Since then, I work as an independent multidisciplinary consultant to cyber security companies, security companies, technology companies, and others. I also work as an independent consultant to governments on strategy and political issues. In addition to those, I also deal with Technology initiatives.

12. I received a Bachelor of Arts in Human Resources and Business Management from Ben Gurion University, in 1999.

13. In 2005, during the course of my service, I received the "Israeli Defense Prize", which is the highest award granted by the State of Israel for significant contributions to the defense of the State of Israel. This award was presented to me by the then President of Israel, Mr. Moshe Katzav.

Questions Considered

I have been asked by DLA Piper LLP (US), counsel for Arab Bank plc, to offer my opinions in response to the following questions:

- Was there an active conflict between Israel and militant organizations operating within the Gaza Strip from January 2008 through April 2008? If so, what was the nature of that conflict?
- What is the “Gaza Envelope” and what was the security situation within that region, specifically with regard to Sderot and the adjacent Nizmit Hill area, from January 2008 through April 2008?
- What is a “Color Red” alert? How often were these alerts issued from January 2008 through April 2008, and who was affected by them during that time?

My responses to these questions, which are set forth below, are based on my expertise in security and intelligence collection, operations and analyses, as well as my training and observations over the course of my 25-year career in the IDF as discussed above, including, most specifically, during my time as the Executive Assistant to the Director General of the Ministry of Defense in 2008. During the early months of 2008, in particular, I was frequently called upon to provide professional recommendations regarding Israel’s response to the increased militant activity from the Gaza Strip, which resulted in regular rocket, mortar and shooting attacks that directly impacted the Gaza Envelope and Israeli Home Front communities.

Discussion

A. Was there an active conflict between Israel and militant organizations operating within the Gaza Strip from January 2008 through April 2008? If so, what was the nature of that conflict?

14. Yes, there was an active conflict between Israel and militant organizations operating within the Gaza Strip from January 2008 through April 2008 (the “Relevant Time Period”).

15. This conflict was part of a decades-long ongoing conflict between the State of Israel and the Palestinians—the characteristics, strength and intensity of which were subject to constant changes, in accordance with political, security, and other circumstances and developments within Israel, the Palestinian Authority, and the entire Middle East.

16. During the Relevant Time Period, the conflict between militant forces operating within the Gaza Strip and Israel was acute and characterized by daily rocket, mortar and shooting attacks originating from the Gaza Strip, and by the operations taken by Israel in response to the violent actions of Gaza militants.

17. To understand the state of the conflict during the Relevant Time Period, some background information is required. In January 2006, general elections were held in the Palestinian Authority and the Hamas movement won a majority of votes in the Palestinian Parliament, compared with its main rival, the PLO. After this election, a bitter fight ensued between Hamas and the PLO over the control of the Gaza Strip.

18. As a result of this fight, a *de facto* separation was created between the Hamas-controlled Gaza Strip and the PLO-controlled West Bank, headed by the chairman of the Palestinian Authority, Mahmoud Abbas (known by the name “Abu Mazen”), which cut itself off from Hamas.

19. During the course of this fighting, Hamas set out to destroy the PLO infrastructure in the Gaza Strip (which up until that time had constituted an official part of the Palestinian Authority politically, economically and security-wise). The cooperation which had existed between Israel and the Palestinian Authority in the Gaza Strip, was cut off with the rise of Hamas to power and its destruction of the PLO infrastructure through violent, harsh and frequent conflict between Hamas and PLO activists.

20. During this same time, despite the fact that the State of Israel had withdrawn from the Israeli settlements in the Gaza Strip in 2005, violent attacks directed against Israel from militants operating within the Gaza Strip continued, with an emphasis on targeting the communities surrounding the Gaza Strip (the “Gaza Envelope”), and this violence got progressively worse over time.

21. From 2006, many militant organizations, including independent factions, acted against Israel by executing violent attacks, especially (but not only) in the form of launching rockets, mortars, and committing shootings against the Gaza Envelope and the Israeli Home Front. Numerous militant organizations, as will be described below took part in committing these attacks against Israeli interests.

22. Despite their mutual animosity toward Israel, the militant organizations operating within the Gaza Strip did not necessarily act in a coordinated manner. In many instances, for example, Hamas was in conflict with other Gaza militants, and acted with violence against them.

23. Throughout this period of time, in response to the violent attacks against it from militant forces operating within the Gaza Strip, the State of Israel continued with its forceful policies, with regard to both its political positions and its security measures, against those

responsible for committing these attacks, thus resulting in a continuous cycle of attacks from the Gaza Strip and Israeli military reaction which increased and decreased over time.

24. A significant escalation in the conflict between Israel and militant forces operating within Gaza, including Hamas, began in early 2008 and continued throughout the Relevant Time Period. During this time, hundreds of rockets and mortars were launched from within the Gaza Strip against the Gaza Envelope and Israeli Home Front, and shooting attacks along the Israel-Gaza border fence were common, as was the placing of improvised explosive devices by Gaza militants. As a result of the attacks that occurred during this time period, dozens of residents of communities located within the Gaza Envelope were killed and injured and extensive damage was caused to property. The city of Sderot and communities surrounding it suffered the most.

25. Thus, during the Relevant Time Period (January-April 2008), 1,136 rockets were launched from Gaza, compared with 434 launches in the last third of 2007—an increase of approximately 270%; and compared with 1,271 rockets which were launched during the course of the entire 2007. Furthermore, during the Relevant Time Period, 423 mortar bomb shooting attacks took place (every attack included the launch of one or more mortar bombs), compared with 663 mortar bomb shooting attacks throughout a twelve-month period in 2007.¹

26. These attacks were conducted by various militant organizations operating within the Gaza Strip, including the military wing of Hamas (the *Izz ad-Din al-Qassam Brigade* and other factions), the Palestinian Islamic Jihad Organization (PIJ), the National Resistance Committee, the National Front for the Liberation of Palestine, the Democratic Front, and many

¹ Israeli Security Agency, Monthly Report: April 2008: Terror Casualty Data, Distribution of Fatalities by Palestinian Terror–2000-2008, available at <http://shabak.gov.il> (full cite listed in Exhibit E).

other small independent militant organizations which constantly appeared—some of which carried out only one attack. In effect, some of these small independent organizations were completely unknown in real time, and their mere existence became known for the first time only when they took responsibility (whether substantiated or not) in connection with the perpetration of a particular attack. And some of these organizations were thwarted by Israel immediately after the execution of their attacks.

27. In order to contend with the escalation of violence and the constant threat from the Gaza Strip during the Relevant Time Period, Israel took many political, security and intelligence actions. Amongst other things, a number of “Targeted Prevention” actions were carried out against leaders and active militants in the Gaza Strip, airstrikes were carried out on strategic locations in the Gaza Strip, smuggling tunnels were exposed and attacked, airstrikes were carried out to frustrate violent activities in real time, and so on and so forth.

28. As part of Israel’s response to the escalation of rocket, mortar, and other attacks from within the Gaza Strip, in February 2008, the IDF carried out an extensive military operation code-named “*Warm Winter*”, which included operations undertaken in the Gaza Strip by the Israeli Air Force and massive IDF ground units. Exchanges of fire took place during this operation between IDF forces and Palestinian militants, which resulted, according to Palestinian reports, in dozens of Palestinians being killed. Throughout the *Warm Winter* operation, high-altitude track shooting continued in the direction of the Gaza Envelope and the Israeli Home Front. For example, a Grad rocket hit a residential home in Ashkelon near the home of Mr. Avi Dichter, the Minister for Internal Security at that time.²

² Publication Released: A Grad Rocket landed Near Minister Dichter’s House, YNET, March 4, 2008, available at <http://www.ynet.co.il/articles/0,7340,L-3514531,00.html>.

29. Notwithstanding the fact that the *Warm Winter* campaign was expansive and exceptional in scope and measures used, it became evident upon its conclusion that the security picture did not change significantly, and that various Palestinian militant organizations continued to carry out shooting attacks (high-altitude shooting as well as firearm shooting) against the Gaza Envelope and the Israeli home front.

30. As part of Israel's response to this violence, the IDF and Israeli intelligence continuously assessed the security risks posed by militants operating within Gaza, including Hamas, and, based on those assessments, decisions were made with respect to the opening and closing of border posts between Israel and the Gaza Strip. Due to the security threats during this time, Israel was forced to significantly limit the transfer of goods and products into Gaza through the border posts.

31. The authority supervising the operating of the border posts is a governmental authority of the Ministry of Defense (the "Border Authority"). By virtue of my position as a senior assistant to the Director General of the Ministry of Defense, I was involved, *inter alia*, in the making of daily decisions regarding the opening of the border posts from Gaza and the extent of the movement that would be allowed through those posts. During the period of escalation at issue, I was often party to decision-making regarding the complete closing of the border posts, or part thereof, and limiting movements to humanitarian cases and the transfer of essential products only. These decisions were made for security reasons, despite pressure exercised against Israel from both foreign and internal entities to allow for the opening of the border posts and for the full movement of goods through these posts.

32. Within the framework of my duties during the Relevant Time Period, I was also in constant contact with the representatives of the local council of the municipalities located

within the Gaza Envelope and the Israeli Home Front, who were routinely exposed to the rocket, mortar and shooting attacks originating from the Gaza Strip. During the Relevant Time Period, I often visited these communities, *inter alia*, with the aim of improving the response provided by the Ministry of Defense for the residents. As such, at that time I approved the allotment of many additional resources in order to construct and maintain shelters and situation rooms and to place other means of protection, such as barricades, in the Gaza Envelope communities as well as in communities in the Israeli Home Front which began to suffer from the high-altitude shooting from the Gaza Strip area, such as Ashkelon, Nitzan, Ashdod and others.

33. At the same time, the Ministry of Defense and the IDF acted to develop and improve the “Color Red” warning system, and other means of trying to increase the safety of the residents of the Gaza Envelope communities and Israel home front, as shall be discussed below, including to advance the “Iron Dome” project, which at that time was in its infancy.

B. What is the “Gaza Envelope” and what was the security situation within that region, specifically with regard to Sderot and the adjacent Nizmit Hill area, from January 2008 through April 2008?

34. The Gaza Envelope is an area in Israel bordering the Gaza Strip, which includes the communities located within a radius of approximately 7 km from the security fence separating Israel and the Gaza Strip.⁴ Within the Gaza Envelope is the city of Sderot, and communities such as Yad Mordechai, Nir Oz, Ein Hashlosa, Kfar Azah, Beeri Nativ Ha’asrah, Nir Am, Miflasim, among others.

35. The Gaza Envelope is under constant threat from the Gaza Strip. This threat increased with the execution of the “disengagement” program and the unilateral withdrawal of Israeli settlements from the Gaza Strip in 2005 and reached a peak during the first half of 2008, as described above. With the arming of militant organizations in Gaza, and the advancement of their means of warfare and improved ability to fire rockets at ranges of more than 30 km, other communities in the Israeli Home Front fell within the zone of threat from the Gaza Strip and also suffered actual harm.

36. The city of Sderot, located approximately only 1 km from the Gaza border fence, was perceived during the Relevant Time Period, and is still perceived today, in the eyes of the Israeli public, as a symbol for the suffering of the residents of the south as a result of high-altitude rocket fire attacks from the Gaza Strip. For the residents of Sderot, the Color Red alert, sound of falling rockets and mortar bombs, and psychological, property and personal

⁴ The Prime Minister’s office has posted a map of the Gaza Envelope at the following URL: <http://www.pm.gov.il/NR/rdonlyres/1EE06D55-6137-4A67-9863-0088A16EB43E/0/map.pdf.pdf>.

damages resulting from living in a “war zone,” became part of the realities of daily life, particularly during the Relevant Time Period.

37. In response to the impact of this militant activity on the residents of Sderot, Israeli citizens and foreign tourists occasionally visited Sedrot to stand with the Israeli population that was directly under attack.

38. Nizmit Hill is a hill located to the west of agricultural fields of the Nir Am Kibbutz, at a distance of only a few hundred meters from the Gaza border fence and a short distance from the city of Sderot. An observation point was set up on the hill, in the name of the late Colonel Nabiah Marai (the deputy command of the Gaza division, who was killed in 1996 in the Gaza Strip). From this observation point, one can quite easily see the north of the Gaza Strip, including the cities of Gaza and Beit Chanoun. The hill is located in the first line of the border fence, so that apart from the threat of launches on the Gaza Envelope communities of high-altitude track firing, the hill is also easily exposed to sniper fire and direct canon fire from the area of the north of the Gaza Strip.

39. In my experience, Nizmit Hill was, from January-April 2008, a threatened target for which the recommendation of the security and military forces was to coordinate visits on the hill with the relevant security forces. Even when I was personally asked to come to the area by virtue of my position, I used to coordinate my arrival with the IDF’s Gaza division who is responsible for the geographical area of the Gaza Strip region, and I was often accompanied by the IDF in my tours in the Gaza Envelope. To the best of my memory, after the shooting event on the entourage of the then Minister of Internal Security, Mr. Avi Dichter, on April 4, 2008, the hill was declared, for a certain period of time, as a closed military area, by the commander of the southern command at that time, General Yoav Galant.

C. What is a “Color Red” alert? How often were these alerts issued from January 2008 through April 2008, and who was affected by them during that time?

40. Color Red is a system used to warn citizens of incoming high-altitude track shootings. The Color Red system uses warning sirens deployed by the Israeli Home Front Command, providing citizens with a warning of about 15-30 seconds to take cover against an expected attack. During the Relevant Time Period, the Color Red system was deployed in response to the rocket attacks discussed above.

41. The system came into use in 2004 within the Gaza Envelope. Initially the system was simplistic, and its ability amounted to identifying the launch only, without the ability to pinpoint the source of the launch or to predict the expected landing point.

42. Following the intensity of the high-altitude track shooting incidents from the Gaza Strip, and the improvement of range for the launching of rockets by Hamas, and other Palestinian militant organizations, the Ministry of Defense—through the “Administration for the development of weapons and technological infrastructure” and the IDF—through the Land Forces Command and Home Front Command, sought to improve the system in order to enable the residents of the south, as far as possible, to lead more “ordinary” lives in the shadow of the rocket and mortar bomb barrages. Amongst other things, the Ministry of Defense, Land Forces Command and Home Front Command acted to improve the technological abilities of the system, with regard to both shortening the period of time between a rocket launch and the sounding of the siren, and with respect of predicting the expected point of harm. These improvements enabled the limiting of the number of residents who were forced to take cover at the time hearing the siren, and increased the confidence of the residents in the system. Despite these improvements, however, many residents continued to feel a lack of security and experienced constant fear of attacks from the Gaza Strip.

43. In light of the intensification and increased range of the high-altitude track shootings launched by militants in the Gaza Strip during the Relevant Time Period, the Home Front Command and the Ministry of Defense began expanding the deployment of the system and the use thereof, to additional communities in the Israeli Home Front. Thus, for example, during February 2008, the system was operated for the first time in Ashkelon, which is located about 10 km from Gaza.³

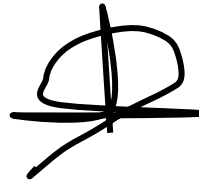
44. At the relevant time period, the Code Red system was quite efficient, and identified almost each and every launch committed by the Gaza militants. Accordingly, the number of times the alert system was operated during the Relevant Time Period was very close to the number of launches described above, *i.e.*, hundreds of times within the first four months of 2008.

45. Along with the “Color Red” system, the Ministry of Defense and the Home Front Command acted during the Relevant Time Period to also equip residents of the communities in the line of fire with a wide range of additional means of warning, such as notices through a Pager system; a special radio station (“The Silent Wave”), which broadcasts sirens during an incident (and which is intended to provide a warning mainly to those driving cars at the time of an attack); and special means for people with physical disabilities, among other measures. Furthermore, the Home Front Command worked closely with the residents of the targeted communities in order to greatly improve their manner of action and conduct during the operation of the warning systems and at times of high altitude track shooting danger.

³ Israel Defense Forces, IDF Announcements: Activating the “Color Red” Alert in Ashkelon, 28 February 2008, available at <http://dover.idf.il/IDF/announcements/08/02/2802.htm>.

46. Furthermore, during the Relevant Time Period, the need for a system which would provide an effective and active defense against rockets launched against the Gaza Envelope and the Israeli home front, became clear and urgent. Accordingly, the Director General of the Ministry of Defense ordered the acceleration of the development process for the “Iron Dome” system, which is a system for intercepting rockets that was developed by Israeli security firms. This system was developed within a relatively short period of time and presently provides, alongside the warning systems spread out through the Gaza Envelope and the relevant communities within the Israeli Home Front, a qualitative response to continued rocket fire from the Gaza Strip.

Dated: 4 September 2012

A handwritten signature in black ink, consisting of a stylized, overlapping loop and a horizontal line.

Yohai Bar Zakay

EXHIBIT A
Curriculum Vitae
Colonel (Ret.) Yohai Bar Zakay

Contact Information

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Experience

- 06/2012–Present: Consultant to cyber security companies, security companies, and technology companies, among others; Consultant to governments on strategy and political issues; Technology Entrepreneur.
- 11/2009–05/2012: Military Intelligence Directorate of the State of Israel, 8200 Unit, Deputy Commander.
- 02/2008–11/2009: Ministry of Defense of the State of Israel, Executive Assistant to the Director General.
- 2005–01/2008: Military Intelligence Directorate of the State of Israel, 8200 Unit, Intelligence Liaison, Washington D.C.
- 2003–2005: Military Intelligence Directorate of the State of Israel, 8200 Unit, Chief of the Department for Special Operations.
- 2001–2003: Military Intelligence Directorate of the State of Israel, 8200 Unit, Operations Chief.
- 1999–2001: Military Intelligence Directorate of the State of Israel, 8200 Unit, Chief of the Operations Section in the Department for Special Operations.
- 1995–1997: Military Intelligence Directorate of the State of Israel, 8200 Unit, Executive Assistant to the Commander.
- 1993–1995: Military Intelligence Directorate of the State of Israel, 8200 Unit, Commander of Unit base for the Geographical area of the Palestinian Authority.
- 1987–1991: Israel Defense Forces, Logistics Corps.

Education

- 1999 – Bachelor of Arts in Human Resources and Business Management from Ben Gurion University.

Awards

- 2005 – Recipient of the “Israeli Defense Prize”, awarded by the President of Israel.

EXHIBIT B

COMPENSATION

My compensation for my work on this matter is at the rate of \$300 per hour, plus expenses.

EXHIBIT C

PUBLICATIONS

None.

EXHIBIT D

OTHER EXPERT TESTIMONY

I have not testified as an expert witness prior to this matter.

EXHIBIT E

DOCUMENTS REVIEWED

In preparing this report, I have reviewed the documents cited herein, including:

- Israeli Security Agency, “Monthly Report: April 2008: Terror Casualty Data, Distribution of Fatalities by Palestinian Terror–2000-2008,” available at <http://www.shabak.gov.il/SiteCollectionImages/%D7%A1%D7%A7%D7%99%D7%A8%D7%95%D7%AA%20%D7%95%D7%A4%D7%A8%D7%A1%D7%95%D7%9E%D7%99%D7%9D/%D7%A0%D7%AA%D7%95%D7%A0%D7%99%D7%9D%20%D7%A2%D7%93%D7%9B%D7%A0%D7%99%D7%99%D7%9D/final-04-2008/April-summary-2008>;
- Publication Released: A Grad Rocket landed Near Minister Dichter’s House, YNET, March 4, 2008, *available at* <http://www.ynet.co.il/articles/0,7340,L-3514531,00.html>; and
- Israel Defense Forces, IDF Announcements: Activating the “Color Red” Alert in Ashkelon, 28 February 2008, *available at* <http://dover.idf.il/IDF/announcements/08/02/2802.htm>.